UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW HAMPSHIRE

In re:	*	
	*	Chapter 7
THE MORTGAGE SPECIALISTS, INC.	*	
	*	Case No. 19-10889-MAF
Debtor.	*	
	*	

MOTION TO APPROVE SETTLEMENT AGREEMENT

Michael S. Askenaizer, the duly appointed Chapter 7 Trustee in the above-captioned case (the "Trustee"), by and through his attorneys, Sheehan Phinney Bass & Green PA, respectfully submits his motion (the "Motion") to approve a settlement agreement by and between the Estate and Michael Gill, Jr. and Nextgen Mortgage, Inc. (collectively, the "Defendants" and with the Trustee, the "Parties").

In support of this Motion, the Trustee respectfully states as follows:

A. JURISDICTION AND VENUE

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. §157(b)(2)(A) and (O).

2. Venue is proper pursuant to 28 U.S.C. §§11408 and 1409.

B. INTRODUCTION

Via this Motion, the Trustee requests that the Settlement Agreement by and between the Parties be approved. The Settlement Agreement comes as a result of significant investigation into the Debtor's and Defendants' operations, testimony from Gill, Jr., review of voluminous documents obtained from the Debtor's three (3) business locations and the New Hampshire Banking Department, and settlement negotiations with the Defendants.

The Settlement Agreement resolves all claims by and between the Trustee and the Defendants.

C. BACKGROUND

3. On June 27, 2019 (the "Petition Date"), Dick Anagnost, H. Andrew Crews, and William Greiner (collectively, the "Petitioning Creditors") filed an involuntary petition under Chapter 7 of the Bankruptcy Code, 11 U.S.C. §§ 101 et. seq. (the "Code") against The Mortgage Specialists, Inc. (the "Debtor").

4. The Petitioning Creditors each have final judgments against the Debtor that total, in the aggregate, more than $274 million dollars.

5. In addition to the Petitioning Creditors, other unsecured creditors have filed claims totaling approximately $260,000.00.

6. On June 27, 2019, a Summons To Debtor In Involuntary Case (the "Involuntary Summons") was issued by this Court.

7. On June 28, 2019, the Petitioning Creditors served the Involuntary Summons upon a) the Debtor at its corporate headquarters at 2 Main Street, Plaistow, New Hampshire; b) Jason Lander, at the Debtor's office located at 1031 Gold Street, Manchester, New Hampshire; and, c) Vincent Barbageliu, at the Debtor's office located at 327 Amherst Street, Nashua, New Hampshire.

8. On July 18, 2019, the Debtor also served the Involuntary Summons upon CT Corporation, the Debtor's Registered Agent.

9. Pursuant to the Involuntary Summons, the Debtor was required to file an answer or a motion to the Involuntary Summons on or before July 19, 2019.

10. The Debtor failed or otherwise refused to file an answer or motion to the Involuntary Summons.

11. On July 24, 2019, this Court held a Status Conference and issued an order extending the deadline for the Debtor to contest the involuntary petition to and including August 9, 2019 (the "Order"). This Court also ordered that the Petitioning Creditors serve the Order on the Debtor on or before July 25, 2019.

12. After the Petitioning Creditors made good service of the Order upon the Debtor, the Debtor once again failed or refused to file an answer or a motion to the Involuntary Petition.

13. On August 12, 2019, an Order For Relief was entered under Chapter 7 of the Code (the "Order for Relief").

14. On August 13, 2019, the Trustee was appointed to administer the Case.

15. Upon and after appointment, the Trustee and his counsel took the deposition of Gill, Jr., recovered voluminous documents from the Debtor's three (3) business locations, and obtained documents from the New Hampshire Banking Department.

16. On January 26, 2021, the Trustee made demand upon Gill, Jr. and Nextgen alleging that Defendants were the alter ego of the Debtor and further alleging causes of action for corporate veil piercing and under sections 105, 544, 547, 548, and 550 of the Code (collectively, the "Trustee Claims"). The Trustee asserted all possible claims against Gill, Jr. and Nextgen and abandons none.

17. The Defendants have denied each and every one of the Trustee Claims.

18. To avoid the expense, delay, uncertainty and risk inherent in litigation, the Parties have agreed, after arms-length negotiations, that it is appropriate, subject to the Bankruptcy

Court's approval, to resolve the Trustee Claims upon the following terms and conditions (the "Settlement Agreement").

19. In order to draft, finalize and obtain Court approval of the Settlement Agreement, the Parties executed a Tolling Agreement, effective August 9, 2021, tolling all statute of limitations, among other things, on the Trustee Claims (the "Tolling Agreement").

D. THE SETTLEMENT AGREEMENT

20. Generally, the Settlement Agreement, attached hereto as Exhibit A provides as follows:[1]

A. Gill, Jr. and Nextgen, jointly and severally, will pay to the Estate $150,000.00 in three equal installments (collectively, the "Settlement Payments");

B. To secure the payment of the Settlement Payments, Gill, Jr. and Nextgen have, jointly and severally, executed a Stipulation of Judgment in the amount of $300,000; and,

C. The Estate release of Gill, Jr. and Nextgen are contingent upon Gill, Jr. and Nextgen making all the Settlement Payments in a timely fashion.

E. ARGUMENT IN SUPPORT OF RELIEF REQUESTED

21. Federal Rule of Bankruptcy Procedure 9019 allows bankruptcy courts to approve compromises and settlements if they are in the best interests of the estate.

22. When assessing a compromise or settlement, a bankruptcy court is to canvass the issues and see whether the settlement falls below the lowest point in the range of

[1] The description of the Settlement Agreement herein is, and is intended to be, a summary only. For a detailed description of the settlement, please refer to the Settlement Agreement filed herewith. To the extent that there is any discrepancy between the summary herein and the Settlement Agreement, the Settlement Agreement shall control.

reasonableness. Hicks, Muse & Co., Inc. v. Brandt (In re Healthco Int'l, Inc.), 136 F.3d 45, 51 (1st Cir. 1998).

23. As stated previously, the Settlement Agreement is the culmination of significant investigation into the Debtor's and Defendants' operations, testimony from Gill, Jr., the review of voluminous documents obtained from the Debtor's three (3) business locations and the New Hampshire Banking Department, and settlement negotiations. The Settlement Agreement resolves all claims by and between the Estate and the Defendants.

24. In reaching the Settlement Agreement, the Trustee considered many factors, including but not limited to:

A. the failure of the Debtor to appear in the Case and resulting consequences;
B. the merits of the claims that could be brought by the Trustee against the Defendants;
C. the defenses, issues and arguments raised by the Defendants;
D. the potential cost to litigate all the claims;
E. the uncertain outcome inherent in litigation;
F. the impact of the settlement versus litigation upon the creditors of the Estate; and,
G. the net return to the Estate if the Trustee was successful.

25. The Trustee, in his business judgment, has determined that the Settlement Agreement is in the best interests of the Estate and its creditors. Absent the Settlement Agreement, the Estate will be forced into uncertain litigation which may or may not ultimately benefit the Estate.

F. CONCLUSION

WHEREFORE, the Trustee respectfully requests that this Court grant this Motion, allow the Settlement Agreement and grant such further relief as this Court deems to be just

Respectfully submitted,

MICHAEL S. ASKENAIZER, TRUSTEE
By His Attorneys,

Dated: August 30, 2021

SHEEHAN PHINNEY BASS & GREEN PA

By: /s/ James S. LaMontagne

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